

**STATE OF NEW HAMPSHIRE**  
**DEPARTMENT OF LABOR**  
**CONCORD, NEW HAMPSHIRE**



V

**Home Depot Inc**

**DECISION OF THE HEARING OFFICER**

**Nature of Dispute:** RSA 275:43 I unpaid wages  
RSA 275:43 V unpaid sick leave pay

**Employer:** Home Depot Inc, 2455 Paces Ferry Rd, Atlanta GA 30339

**Date of Hearing:** December 11, 2017

**Case No.:** 56208

**BACKGROUND AND STATEMENT OF THE ISSUES**

The claimant asserts she is owed \$1,138.40 for eighty-hours in unpaid sick leave pay due to her when she resigned.

The employer denies the claimant is due any sick leave pay as per their policy they do not pay out sick leave pay to separated employees.

**FINDINGS OF FACT**

The claimant worked for the employer from 2006 through September 10, 2017, when she walked out after providing a two week notice. She then put in a request beginning September 11, 2017, for the payment of her eighty hours of accrued sick leave, for a total of \$1,138.40.

The claimant is aware of the written policy that states that payment for sick leave is not paid to terminated employees, but she argues she quit and was not terminated by the employer.

The employer argues the written policy expressly notices the claimant the sick leave is not paid upon termination. She could have taken the sick time and then resigned if she so chose.

RSA 275:49 III requires that the employer make available to employees in writing, or through a posted notice maintained in an accessible place, employment practices and policies regarding sick leave pay. Lab 803.03 (b) requires employers to provide his/her employees with a written or posted detailed description of employment practices and policies as they pertain to paid vacations, holidays, sick leave, bonuses, severance pay, personal days, payment of the employees expenses, pension and all

other fringe benefits per RSA 275: 49. Lab 803.03 (f) (6) requires an employer maintain on file a signed copy of the notification.

The employer properly notified the claimant of the written policy on June 4, 2006, the date the claimant signed the acknowledgement of the handbook. The policy reads, in relevant part, "Termination – Upon termination, unused accrued sick/personal time is not paid to the associate."

The claimant's argument that she resigned and was not terminated by the employer is not persuasive. Black's Law Dictionary defines "termination" as end in time or existence; close; cessation; conclusion. The Hearing Officer finds the word termination refers to the cessation of employment, not whether or not the claimant was asked to leave by the employer.

Therefore, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence she is due any sick leave pay until the employer's written policy.

### **DECISION**

Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages due an employee, and as RSA 275:43 V considers vacation pay to be wages, when due, if a matter of employment practice or policy, or both, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that she is due any sick leave pay, it is hereby ruled that the Wage Claim is invalid.

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Melissa J. Delorey  
Hearing Officer

Date of Decision: December 28, 2017

Original: Claimant  
cc: Employer

MJD/nm